REMARKS

By this Amendment, Applicants amend claims 1 and 9. Claims 1-16 remain currently pending.

In the final Office Action, the Examiner rejected claims 1, 4, 9, and 12 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0138643 to Shin et al. ("Shin") in view of U.S. Patent No. 7,124,438 to Judge et al. ("Judge"); rejected claims 2-6, 8, 10-14, and 16 under 35 U.S.C. § 103(a) as being unpatentable over Shin in view of Judge and U.S. Patent No. 6,986,139 to Kubo ("Kubo"); and rejected claims 7 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Shin in view of Judge and Kubo, and further in view of U.S. Patent No. 7,107,619 to Silverman ("Silverman").[1]

Applicants respectfully traverse the Examiner's rejection of claims 1, 4, 9, and 12 under 35 U.S.C. § 103(a) as being unpatentable over Shin in view of Judge. To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See* M.P.E.P. § 2142, 8th Ed., Rev. 5 (August 2006). Moreover, "in formulating a rejection under 35 U.S.C. § 103(a) based upon a combination of prior art elements, it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed." USPTO Memorandum from Margaret A. Focarino, Deputy Commissioner for Patent Operations, May 3, 2007, page 2.

[1] The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

Independent claim 1, as amended, recites a combination including, for example, "a data request acceptance unit configured to accept data requests sent from client computers coupled to a server computer via the protection apparatus, as proxy for the server computer which is different from the protection apparatus." Shin fails to teach or suggest at least these features of amended claim 1.[2]

Shin teaches providing software modules in a Kernel Space of the operating system that is running on an internet server to monitor server traffic. See Shin, Fig. 1. "The monitor is loaded as an independent kernel-module to sample system statistics. . . The load-controller is an independent kernel-module, for similar reasons as the monitor, that registers its overload and underload handlers with the monitor when it is loaded into kernel." Shin, paras. [0067] & [0070], emphasis added. Therefore, Shin's teaching of using on-board software to control server traffic does not constitute "a data request acceptance unit configured to accept data requests sent from client computers coupled to a server computer via the protection apparatus, as proxy for the server computer which is different and separate from the protection apparatus," as recited in amended claim 1 (emphasis added).

In fact, Shin is completely silent on any separate proxy for the internet server. Moreover, Shin's teaching of on-board software implementation of traffic management teaches away from "proxy for the server computer which is different and separate from the protection apparatus," as recited in amended claim 1 (emphasis added).

Judge fails to cure the deficiencies of Shin. The Examiner alleges that "Judge reference teaches a measurement unit configured to collect measurements within a

[2] Support for the amendments may be found at, for example, Fig. 1 and paragraph [028] of the specification.

predetermined time period (see col. 16, lines 15-16 and lines 52-62)." (Office Action at 7). Even assuming the Examiner's allegation is true, which Applicants do not concede, Judge fails to teach or suggest at least "a data request acceptance unit configured to accept data requests sent from client computers coupled to a server computer via the protection apparatus, as proxy for the server computer which is different and separate from the protection apparatus," as recited in amended claim 1 (emphasis added).

Therefore, neither Shin nor Judge, taken alone or in any reasonable combination, teaches or suggests all elements of amended claim 1. A *prima facie* case of obviousness has not been established. Accordingly, Applicants respectfully request withdrawal of the Section 103(a) rejection of amended claim 1. Because claim 4 depends from claim 1, Applicants also request withdrawal of the Section 103(a) rejection of claim 4 for at least the same reasons stated above.

Further, amended independent claim 9, while of different scope, includes similar recitations to those of amended claim 1. Amended claim 9 is therefore also allowable for at least the same reasons stated above with respect to claim 1. Applicants respectfully request withdrawal of the Section 103(a) rejection of claim 9 and also claim 12, which depends from claim 9.

Applicants respectfully traverse the Examiner's rejection of claims 2-6, 8, 10-14, and 16 under 35 U.S.C. § 103(a) as being unpatentable over Shin in view of Judge and Kubo, because a *prima facie* case of obviousness has not been established.

Claims 2-6 and 8 depend from claim 1 and claims 10-14 and 16 depend from claim 9, either directly or indirectly. As set forth above, Shin and Judge fail to teach or suggest at least "a data request acceptance unit configured to accept data requests

sent from client computers coupled to a server computer via the protection apparatus, as proxy for the server computer which is different and separate from the protection apparatus," as recited in amended claim 1 and required by claims 2-6 and 8, and "accepting data requests sent from client computers coupled to the server computer via the protection apparatus, as proxy for the server computer which is different and separate from the protection apparatus," as recited in amended claim 9 and required by claims 10-14 and 16 (emphasis added).

Kubo fails to cure the deficiencies of Shin and Judge. Kubo teaches "[a] dynamic load balancing method allowing a transaction processing load is balanced among computers by using estimated elongation rates." Kubo, abstract. "The elongation rate of processing time in each computer is estimated based on measured load data obtained by measuring, at a certain time cycle, the number of in-process transactions and the number of job processing processes staying in the CPU system, or, the number of in-process transactions and the CPU utilization." Kubo, column 4, lines 62-67, emphasis added. However, Kubo fails to teach or suggest at least the claim elements listed above.

Therefore, none of Shin, Judge, and Kubo, taken alone or in any reasonable combination, teaches or suggests all elements as required by claims 2-6, 8, 10-14, and 16. A *prima facie* case of obviousness has not been established. Accordingly, Applicants respectfully request withdrawal of the Section 103(a) rejection of claims 2-6, 8, 10-14, and 16.

Applicants respectfully traverse the Examiner's rejection of claims 7 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Shin in view of Judge and Kubo,

and further in view of Silverman, because a *prima facie* case of obviousness has not been established.

Claim 7 indirectly depends from claim 1 and claim 15 indirectly depends from claim 9. As set forth above, Shin, Judge, and Kubo fail to teach or suggest at least "a data request acceptance unit configured to accept data requests sent from client computers coupled to a server computer via the protection apparatus, as proxy for the server computer which is different and separate from the protection apparatus," as recited in amended claim 1 and required by claim 7, and "accepting data requests sent from client computers coupled to the server computer via the protection apparatus, as proxy for the server computer which is different and separate from the protection apparatus," as recited in amended claim 9 and required by claim 15 (emphasis added).

Silverman fails to cure the deficiencies of Shin, Judge, and Kubo. The Examiner alleges that the "Silverman reference teaches: a communication state detection unit configured to detect if said client computer has been forcibly cut off and to detect if any abnormality in a communication state exists (see col. 12, lines 22-29, 'number of incorrect responses')." (Office Action at 12.) Applicants respectfully disagree. However, even assuming that the Examiner's allegation is true, which Applicants do not concede, Silverman fails to teach or suggest at least the above listed claim elements as recited in claim 1 and claim 9, and required by claim 7 and claim 15, respectively.

Therefore, none of Shin, Judge, Kubo, and Silverman, taken alone or in any reasonable combination, teaches or suggests all elements as required by claims 7 and 15. A *prima facie* case of obviousness has not been established. Accordingly,

Applicants respectfully request withdrawal of the Section 103(a) rejection of claims 7 and 15.

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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